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WILLIAM T FUJIOKA
Chief Executive Officer

March 27, 2009

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

This memorandum includes a summary of the decision by the State Treasurer and the Director of the Department of Finance on the status of the Stimulus trigger, pursuit of County position on legislation, the status of two County advocacy bills, and a summary of a recent Assembly Budget Subcommittee hearing on Medi-Cal.

State Treasurer and Department of Finance Director Announce Decision on Stimulus Trigger

As part of the recent budget agreement, the Treasurer and the Finance Director were required to determine by April 1, 2009 if the State would receive at least $10 billion in Federal Stimulus funding that could be used to offset General Fund expenditures. If they concluded that the State would receive this amount, then $948 million in expenditure reductions would be restored and the increase in the personal income tax rate would be reduced from 0.25 percent to 0.125 percent.

State Treasurer Bill Lockyer and Department of Finance Director Mike Genest issued a statement this morning indicating that California will receive only $8.17 billion in additional Federal funds that could be used to offset State General Fund expenditures. As a result of their finding that the State will fall short of the $10 billion trigger level, funding reductions for the County's Safety Net Care Pool and South Los Angeles Preservation Fund in the amount of $24.4 million, and $5.6 million for Medi-Cal optional benefits will not be restored.

In the Treasurer's letter communicating his finding to the Governor and the Legislative Leadership, he urged them to restore the reductions in optional dental benefits and the minimum pay guarantee for In-Home Supportive Services workers. The Treasurer's letter is attached.

Pursuit of County Position on Legislation

SB 114 (Liu), as amended on March 16, 2009, would create a simplified process to allow former foster youth to maintain Medi-Cal eligibility.

Under current law, former foster youth who received Medi-Cal benefits prior to their 18th birthday are eligible to Medi-Cal benefits until they reach the age of 21. As a condition of receiving Medi-Cal benefits, these individuals must complete a Medi-Cal application. SB 114 would eliminate this requirement, and instead, former foster youth would be deemed eligible to Medi-Cal and enrolled for benefits without completing a new application. At the time of the annual re-determination for eligibility, former foster youth would receive a simplified form and will be instructed to complete it only if information previously reported has changed. Failure to return the form alone would not result in the loss of Medi-Cal benefits unless a determination is made that the former foster youth is no longer eligible to Medi-Cal.

The Department of Children and Family Services (DCFS) indicates that it is essential that former foster youth maintain health care coverage during the pivotal time in which they emancipate. According to DCFS, SB 114 would help provide a seamless transition to emancipation by eliminating lapses in Medi-Cal benefits for former foster youth.

The departments of Children and Family Services and Public Social Services, and this office support SB 114. Support is consistent with existing policy to simplify Medi-Cal eligibility rules and to facilitate successful emancipation of youth aging out of foster care. Therefore, **the Sacramento advocates will support SB 114.**

SB 114 is scheduled for a hearing in the Senate Health Committee on April 1, 2009. The bill is sponsored by the County Welfare Directors Association, the Alliance for Children's Rights, the Children's Advocacy Institute, and the Western Center on Law and Poverty, and it is supported by the California State Association of Counties. There is no registered opposition on file.

Status of County Advocacy Legislation

County-supported SBX3 24 (Alquist), as amended on March 16, 2009, which would suspend Medi-Cal semi-annual reporting and temporarily restore 12-month continuous Medi-Cal eligibility for children under 19 years of age, passed the Senate Floor by a vote of 35 to 0 on March 23, 2009, and passed the Assembly Floor by a vote of 59 to 0 on March 26, 2009. SBX3 24 is an urgency measure necessary for California to qualify for the temporary increase in the Federal Medical Assistance Percentage provided under H.R. 1, the American Recovery and Reinvestment Act. This measure now proceeds to the Governor for signature

County-supported SB 23 (Padilla), as introduced December 1, 2008, would require the operator of a mobilehome park or manufactured housing community to develop and implement an emergency and fire safety plan and provide appropriate emergency services training for park or community managers and on-site staff. As previously reported, SB 23 was scheduled for a hearing before the Senate Transportation and Housing Committee on March 31, 2009; however, the bill has been pulled from the hearing agenda.

Assembly Budget Subcommittee Hearing on Medi-Cal

On March 23, 2009, Assembly Budget Subcommittee No. 1 on Health and Human Services held a hearing to discuss Medi-Cal issues including the $54.4 million reduction in Federal Safety Net Care Pool (SNCP) funding for public hospitals. Representatives from the Disproportionate Share Hospital Task Force, including a spokesman for the Department of Health Services (DHS), testified on the importance of restoring SNCP funding, which is used to provide outpatient services and to ease overcrowded emergency rooms.

The Subcommittee briefly discussed the renewal of the State's Hospital Financing Waiver which expires in September 2010. Administration officials announced that they would like to broaden coverage of uninsured persons in the next waiver, and Assembly Members Jim Beall and Hector De La Torre stated that they want legislative involvement early on in the waiver negotiations, and would like to preserve critical funding for public and private disproportionate share hospitals. The Administration plans to begin meetings with stakeholders on the waiver within the next month. The Sacramento advocates and DHS representatives will be participating in those meetings.

We will keep you advised.

WTF:GK:MAL
MR:VE:er

Attachment

c: All Department Heads
Legislative Strategist

BILL LOCKYER
TREASURER
STATE OF CALIFORNIA

March 27, 2009

The Honorable Arnold Schwarzenegger
Governor
State Capitol
Sacramento, CA 95814

The Honorable Darrell Steinberg
President pro Tempore of the Senate
California State Senate
State Capitol
Sacramento, CA 95814

The Honorable Karen Bass
Speaker of the Assembly
California State Assembly
State Capitol
Sacramento, CA 95814

The Honorable Mike Villines
Assembly Republican Leader
California State Assembly
State Capitol
Sacramento, CA 95814

The Honorable Dennis Hollingsworth
Senate Republican Leader
California State Senate
State Capitol
Sacramento, CA 95814

Dear Honorable Leaders:

Government Code section 99030 requires the Director of Finance and me to determine the amount of additional federal funds which may be used "to offset" General Fund expenditures through June 30, 2010. If we determine on or before April 1 the offset amount is at least $10 billion, the statute requires the Director of Finance to provide the Joint Legislative Budget Committee and State Controller written notification of the determination. A determination the $10 billion threshold will be reached triggers two budget actions: Under Section 8.30 of the 2009 Budget Act, the State Controller would restore $947.7 million cut from specific programs; and under AB3X 3, the rate increase on personal income taxes would drop from 0.25% to 0.125%, reducing state revenues by approximately $1.8 billion.

Section 99030 also requires the Director of Finance and me, on or before April 1, to "meet and confer in a public hearing for purposes of" making the trigger determination. We held the hearing on March 17. During the roughly three-hour hearing, we took testimony from fiscal experts, advocates and aid recipients. The weight of the testimony heavily favored an interpretation of Section 99030 that would increase the likelihood the $10 billion threshold would be reached. Additionally, many witnesses testified about the injury they or their clients would suffer if the trigger was not pulled and the spending cuts were not restored. Further, I solicited public comments through the State Treasurer's website. We received close to 2,700 written comments by e-mail and letter. The sentiments expressed in those comments tracked the testimony at the March 17 hearing.

I note the Legislature, in requiring us to make the trigger determination, cannot within the provisions of the State Constitution, delegate to the State Treasurer or Director of Finance the power to set fiscal policy. Our determination must be one that serves an executive, not a legislative, function. In making the trigger determination, our responsibility is to evaluate whether conditions meet the criteria established by Section 99030, not whether the legislated fiscal policy is appropriate.

Though executive in nature, our determination holds great human and fiscal significance. If we agree to "pull the trigger," the State's General Fund balance would fall by nearly $3 billion in the budget year. If we decide the trigger should not be pulled, some of the most vulnerable Californians, people who already shoulder a heavy share of budget-balancing sacrifices, would sustain further injury. And taxpayers would feel the full effects of the tax increase.

I am deeply concerned about all of these consequences, both fiscal and human. In particular, I believe two programmatic cuts will produce harmful consequences that greatly outweigh any savings. Slashing $200 million in State funds for optional dental benefits and the minimum pay guarantee for in-home supportive services workers targets people who most need our help. I consider the suffering that would be caused by these particular cuts to be both severe and compelling. Further, the effect of these reductions would be greatly amplified by the fact the State would forego additional Federal matching and overmatching funds. For these reasons, I strongly urge the Governor and Legislature to reconsider at least these two programmatic cuts before they take effect on July 1.

The decisions the Director of Finance and I make today do not obviate the need for more corrective fiscal actions in May. The choices before the Legislature and Governor become bleaker with each morning's headlines. The municipal credit markets only slowly recover. Employment worsens. The State's short- and long-term fiscal outlook erodes. As a result, only a month following the budget's enactment, the State faces the prospect of ending 2009-10 with a deficit of $6 billion or more. Irrespective of our determination, the Legislature likely will have to reopen the February budget compromise to add revenues and/or cut more programs and services.

I have enclosed my determination, and the findings and conclusions I used in making the determination.

If you have questions, please call.

Sincerely,

Bill Lockyer

BILL LOCKYER
California State Treasurer

AB3X 16 Federal Funds "Trigger" Findings and Conclusions by California State Treasurer Bill Lockyer March 27, 2009

DETERMINATION

Additional Federal funds which will be available to offset General Fund expenditures in the period ending June 30, 2010, as the State Treasurer (Treasurer) interprets Government Code section 99030 [AB 16 of the Third Extraordinary Session (2008-09)], total less than $10 billion.

PUBLIC COMMENT

Pursuant to Section 99030, the Treasurer and Director of Finance (Director) on March 17, 2009, held a public hearing to take testimony on the trigger determination. During the roughly three-hour hearing, fiscal experts, advocates and aid recipients testified. The great weight of the testimony favored interpreting Section 99030 to increase the likelihood the $10 billion threshold would be reached. Additionally, many witnesses testified about the injury they or their clients would suffer if spending cuts affected by the trigger determination were not restored. Further, the Treasurer solicited public comments through the Treasurer's Office website. Close to 2,700 written comments were submitted by e-mail and letter. These commentators were nearly unanimous in their views, and they expressed many of the same arguments as witnesses who testified at the hearing.

INTERPRETATION OF SECTION 99030

1. **Legislative Intent.** The public record for determining what the Legislature and Governor intended when they enacted the trigger statute is limited to staff analyses prepared prior to final votes in both houses. The measure was drafted in private. It was not subject to any public hearing of the Legislature's policy or fiscal committees. The bill does not define its terms. The legislative analyses provide no definitional guidance and no statements of legislative intent. They merely summarize the measure's provisions. As a result, AB3X 16 requires the Treasurer and Director to use discretion to interpret the terms and give them practical meaning. That interpretation must consider the constitutional and fiscal context.

2. **What Counts Toward Trigger Threshold.** The Treasurer finds that Federal funds count toward the $10 billion trigger threshold if: The funds are *known* to be available through June 30, 2010, and legally can be used to offset General Fund expenditures currently appropriated in the 2008 and 2009 Budget Acts. The Department of Finance (DOF) estimates General Fund spending can be offset by $8.165 billion pursuant to

the trigger statute. In light of my finding regarding what funds count toward the threshold, I find no basis on which to dispute the DOF's estimate, given what is known at the time of this determination. [See endnotes regarding Federal Medical Assistance Percentage (FMAP) and Children's Health Insurance Program Reauthorization (CHIPRA)]

3. **Total Federal Allocations for Consideration.** The statute does not specify the federal funds which may be considered for General Fund offset. For purposes of making the determination, the Treasurer deems it appropriate to consider only those allocations made in Federal or State legislation enacted since January 1, 2009. Three federal bills meet this standard: the American Recovery and Reinvestment Act of 2009, Feb. 17, 2009 (Federal stimulus bill); CHIPRA, Feb. 4, 2009; and the Omnibus Appropriations Bill, Feb. 25, 2009.

   The DOF identified $32.2 billion in known Federal funds which may be drawn down for the period ending June 30, 2010. This figure has been reviewed, evaluated and found reasonable by the Treasurer's staff and by the Treasurer's independent reviewer, Sjoberg/Evashenk Consulting.

   By far, most of the "additional federal funds" are allocated in the Federal stimulus bill. However, the exact allocations available for California to draw down are not fully established. Some allocations cannot be made until the Federal government promulgates regulations. Other allocations depend on the award of grants made through application. As the regulations are set and the awards granted, the amount of federal allocations known to be available to California may increase. However, at this time, we do not know when the Federal rules will be adopted and the allocations made. Nor do we know at this time whether any such allocations made to California would be available to offset General Fund expenditures.

4. **Standard for Use of Federal Funds to Offset GF expenditures.** Use of Federal funds to backfill the General Fund is subject both to limiting conditions imposed by Federal law and the State's own statutory and constitutional conditions for General Fund appropriations. The best and most relevant example of such a constitutional condition is the Proposition 98 minimum General Fund guarantee.

5. **Should the Determination Consideration Be Based on Possible Future Legislative or Administrative Actions?** The Treasurer rejects the assertion the trigger statute affords discretion to consider potential legislative or administrative actions in determining the amount of Federal funds available to offset General Fund expenditures. As the Treasurer interprets AB3X 16, the trigger calculation must be based on General Fund expenditures as they are currently appropriated in the 2008 and 2009 Budget Acts. Section 99030, in the Treasurer's view, does not permit calculating available Federal funds based on a prediction of the likelihood the Legislature and Governor will take any particular policy action.

Based on this interpretation, the Treasurer finds the determination cannot be made assuming the Legislature will reduce General Fund appropriations for Proposition 98 below the minimum level provided in the 2009 Budget Act. Whether the Legislature will make this reduction is a policy decision beyond the scope of this determination. In any event, that decision will not be made until after the May Revise is released on May 28, 2009.

The Treasurer further finds the trigger statute does not permit a "backward look" at General Fund expenditures already accounted for as offset. This finding most notably applies to the $510 million in line item vetoes for state universities which will be offset with some Federal stabilization funds. The Treasurer concludes AB3X 16 must be interpreted on a "going-forward" basis, considering only the increment in Federal funds which can be used to reduce General Fund expenditures *after* enactment of the February State Budget Amendments. Even if the vetoed university expenditures were counted, the offset amount still would fall far short of the $10 billion threshold.

ENDNOTES

FMAP FUNDING ASSUMPTION

Several commentators at the public hearing and in correspondence with the Treasurer's Office pointed out discrepancies between the DOF and the U.S. Government Accountability Office (GAO) estimates of FMAP funding that will be available to California before June 30, 2010. The Treasurer's independent consultant analyzed the differences. Here is the report from Sjoberg/Evashenk Consulting:

"Although the primary federal programs contributing funding that may offset General Fund spending can be identified, the totals for California are not yet solidified. In particular, since the temporary Federal Medicaid Assistance Percentage (FMAP) allocations are premised on a number of factors such as unemployment rates and caseload, accurate calculations cannot be made at this point and estimates vary.

"One calculation made in early February by the U.S. Government Accountability Office (GAO) in a report to Congress estimated each state's share of the total $87 billion pool. California's share (through June 30 2010) was estimated at $8.2 billion. However, GAO has subsequently explained that it "was not attempting to make a precise estimate for any particular state and it would be a mistake to treat GAO's numbers as if they were such an estimate.

"Further, the GAO figures did not account for other programs already receiving enhanced funding and included a leveling factor (3.3 percent increase) to allocate the entire $87 billion pool among the states. Additionally, initial actual allocations to California from Health and Human Services for this program are lower than the GAO projections would suggest. Finally, the GAO's figures also are not reduced by the county-share of savings that should not be counted in the General Fund offset. Calculations prepared by our Consultant show that even using the gross GAO figures adjusted for county share and eligibility restoration, the General Fund offset would increase less than $360 million."

FEDERAL "CHIPRA" FUNDING

Several commentators also urged consideration of any additional funding coming to California as a result of recent re-enactment of the Children's Health Insurance Program Reauthorization Act (CHIPRA 2009). Our review and analysis has determined that the increment California will receive from this Federal program was correctly estimated and included by the Department of Finance in their current estimate of Federal funds available to offset General Fund expenditures between now and June 30, 2010.